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Attorneys for Plaintiff

Digby Adler Group LLC

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**DIGBY ADLER GROUP LLC DBA**

**BANDAGO**, a California limited liability  
company,

Plaintiff,

v.

**IMAGE RENT A CAR, INC.**, a New York  
corporation, and **VAN RENTAL CO.,**  
**INC.**, a New York corporation, et al.

Defendants.

Case No. 3:10-cv-00617-SC

**STIPULATION AND [PROPOSED]  
CONSENT JUDGMENT AGAINST  
DEFENDANTS IMAGE RENT A CAR,  
INC. AND VAN RENTAL CO., INC.  
ONLY**

Case No. 3:10-cv-617-SC

**STIPULATION AND [PROPOSED] CONSENT  
JUDGMENT**



1 Plaintiff Digby Adler Group LLC *dba* Bandago and Defendants Image Rent A Car  
 2 Inc. and Van Rental Co., Inc., (collectively, the “Corporate Defendants”), with the  
 3 approval of their respective counsel, request that the Court enter this Proposed Consent  
 4 Judgment (“Consent Judgment”) based on the following stipulated facts:

5 1. Plaintiff is the owner of the trademark BANDAGO for use in connection with  
 6 the rental of passenger cars and passenger vans, and the rental of musical instruments  
 7 and stage and movie equipment. Plaintiff is the rightful owner of the domain name  
 8 <bandago.net>.

9 2. On February 11, 2010, Plaintiff filed the initial complaint in this action, which  
 10 named Image Rent A Car Inc. and Van Rental Co., Inc. as defendants. On March 21,  
 11 2011, Plaintiff filed an amended complaint in this action against all Defendants. [D.E. No.  
 12 85.]

13 3. In this action, Plaintiff has asserted claims for Cybersquatting (Lanham Act  
 14 §43(d); 15 USC §1125(d)(1)); Unfair Competition (Lanham Act §43(a), 15 U.S.C.  
 15 §1125(a)); False Advertising (Lanham Act §43(a), 15 U.S.C. §1125(a)(1)(B)); Common  
 16 Law Trademark Infringement; Unlawful, Unfair, or Fraudulent Business Practices (Cal.  
 17 Bus. & Prof. C. §17200); Copyright Infringement, Vicarious Copyright Infringement, and  
 18 Contributory Copyright Infringement (17 U.S.C. §501 *et seq.*); and Infringement of an  
 19 Unregistered Trademark (15 U.S.C. §1125(a)).

20 4. This Court has subject matter jurisdiction over this action and personal  
 21 jurisdiction over the Corporate Defendants.

22 5. On November 17, 2014, Plaintiff filed a motion for partial summary  
 23 judgment against all Defendants. [D.E. No. 122.] On December 2, 2014, Defendant Gad  
 24 Sebag filed a motion for summary judgment. [D.E. No. 134.] On February 6, 2015, the  
 25 Court entered an Order on Cross Motions for Summary Judgment. [D.E. No. 149.] In its  
 26 order, the Court ruled as follows: a) the Court granted partial summary judgment in favor  
 27 of Plaintiff and against the Image Rent A Car Inc., Van Rental Co., Inc., Shneior  
 28 Zilberman as to Plaintiff’s cybersquatting, trademark infringement, and copyright



1 infringement claims; b) the Court awarded \$25,000 in statutory damages on Plaintiff's  
 2 cybersquatting claim; c) the Court denied Plaintiff's motion for partial summary judgment  
 3 against Gad Sebag as to all claims; d) the Court denied Plaintiff's motion for partial  
 4 summary judgment as to the amount of Plaintiff's actual damages for Plaintiff's  
 5 cybersquatting, trademark infringement, and copyright infringement claims; and e) the  
 6 Court denied Gad Sebag's motion for summary judgment as to all claims.

7 6. Except as set forth in this Stipulation and Consent Judgment, the Corporate  
 8 Defendants make no admission as to the allegations of Plaintiff in this action, including  
 9 the allegations in the complaint and the first amended complaint.

10 7. The parties have reached a settlement of this action, governed by a  
 11 separate settlement agreement.

12 8. As part of the settlement agreement, the parties agreed to the entry of this  
 13 Consent Judgment in favor of Plaintiff and against the Corporate Defendants only, jointly  
 14 and severally.

15 9. The parties intend for the Consent Judgment to finally resolve all claims in  
 16 this action against the Corporate Defendants, including those addressed in the Court's  
 17 Order on Cross Motions for Summary Judgment. [D.E. No. 149].

18 10. Based on these stipulated facts, the parties consent to the entry of this  
 19 Consent Judgment and request that the Court enter the same.

20 **ACCORDINGLY, IT IS SO ORDERED, ADJUDGED, AND DECREED THAT:**

21 1. Judgment is hereby entered in this action in favor of Plaintiff and against  
 22 Defendants Image Rent A Car Inc. and Van Rental Co., Inc. only, jointly and severally, in  
 23 the amount of One Hundred Thousand Dollars and No Cents (\$100,000.00).

24 2. Plaintiff and the Corporate Defendants shall bear their own costs and fees.

25 3. Within fourteen (14) days of the entry of this Consent Judgment, the  
 26 Corporate Defendants shall use diligent and reasonable efforts to transfer the domain  
 27 name <bandago.net> to Plaintiff. Any third party registrar possessing control over the  
 28



1 domain name <bandago.net>, including but not limited to Network Solutions, LLC, shall  
2 provide reasonable assistance to Defendants in transferring the domain name to Plaintiff.

3 4. This Consent Judgment fully resolves this action as to the Corporate  
4 Defendants.

5 5. The Court shall retain jurisdiction over this action for purposes of  
6 enforcement of this Consent Judgment.

7  
8 **JUDGMENT IS SO ENTERED.**

9  
10 Dated: \_\_\_\_\_

11  
12 The Honorable Samuel Conti  
United States District Judge

13  
14 STIPULATED TO BY:

15  
16 DATED: July 14, 2015

**KRONENBERGER ROSENFELD, LLP**

17  
18 By:  \_\_\_\_\_

Jeffrey M. Rosenfeld

19  
20 Attorneys for Plaintiff Digby Adler Group LLC dba  
Bandago

21  
22 DATED: July 14, 2015

**HEATH & STEINBECK**

23  
24 By:  \_\_\_\_\_

Steven A. Heath

25  
26 Attorneys for Image Rent A Car Inc., Van  
Rental Co., Image, Gad Sebag, and Shneior  
Zilberman